

45516
EB

SERVICE DATE – NOVEMBER 4, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21073

NATIONAL EXPRESS LLC—ACQUISITION OF CONTROL—TRINITY, INC., TRINITY CARS, INC., AND TRINITY STUDENT DELIVERY, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On October 7, 2016, National Express LLC (National Express or Applicant), a noncarrier, filed an application under 49 U.S.C. § 14303 to acquire control of Trinity, Inc. (Trinity), Trinity Cars, Inc. (Trinity Cars), and Trinity Student Delivery, LLC (Trinity Student) (collectively, Acquisition Carriers). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 & 1182.8.

DATES: Comments must be filed by December 19, 2016. Applicant may file a reply by January 3, 2017. If no opposing comments are filed by December 19, 2016, this notice shall be effective on December 20, 2016.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21073 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicant's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1500, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet (202) 245-0368. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Applicant, a noncarrier, states that it is a holding company organized under the laws of the state of Delaware that is indirectly controlled by a British corporation, National Express Group, PLC (Express Group). Applicant states that Express Group indirectly controls the following passenger motor carriers (collectively, National Express Affiliated Carriers): Beck Bus Transportation Corp. (Beck); Carrier Management Corporation (CMI); Diamond Transportation Services, Inc. (Diamond); Durham School Services, L.P. (Durham); MV Student Transportation, Inc. (MV); National Express Transit Corporation (NETC); National Express Transit Services Corporation (NETSC); Petermann Ltd. (LTD); Petermann Northeast LLC (Northeast); Petermann Northwest LLC (Northwest);

Petermann Southwest LLC (Southwest); Petermann STSA, LLC (STSA); The Provider Enterprises, Inc. (Provider); Rainbow Management Service Inc. (Rainbow); Robertson Transit, Inc. (Robertson); Safeway Training and Transportation Services Inc. (Safeway); Septran, Inc. (Septran); Smith Bus Service, Inc. (Smith); Suburban Paratransit Service, Inc. (Suburban Paratransit); Trans Express, Inc. (Trans Express); and White Plains Bus Company, Inc. (White Plains).

Applicant asserts the following facts regarding the National Express Affiliated Carriers held by Express Group:

- Beck is a passenger motor carrier primarily engaged in providing student school bus transportation services in the states of Illinois and Indiana under contracts with regional and local school jurisdictions. Beck also provides charter passenger services to the public. It holds interstate common carrier authority from Federal Motor Carrier Safety Administration under MC-143528.
- CMI is a passenger motor carrier doing business as Matthews Bus Company and is primarily engaged in providing student school bus transportation services in the state of Pennsylvania under contracts with regional and local school jurisdictions. CMI also provides intrastate charter passenger services to the public. CMI does not have interstate carrier authority as it is not required for the operations conducted by CMI.
- Diamond is a passenger motor carrier providing exempt interstate and regulated intrastate paratransit and shuttle services in the District of Columbia metropolitan area. It does not have interstate carrier authority.
- Durham is a passenger motor carrier primarily engaged in providing student school bus transportation services in approximately 32 states under contracts with regional and local school jurisdictions. Durham also provides charter passenger services to the public. It holds interstate common carrier authority under MC-163066.
- MV is a passenger motor carrier primarily engaged in providing student school bus transportation services in the state of Missouri under contracts with regional and local school jurisdictions. MV also provides charter passenger services to the public. It holds interstate common carrier authority under MC-148934.
- NETC is an intrastate passenger motor carrier with its principal place of business in Cincinnati, Ohio. NETC does not have interstate carrier authority.
- NETSC is a passenger motor carrier engaged primarily in providing intrastate transit services in the areas of Westmoreland, Pa.; Arlington, Va.; Greensboro, N.C.; Vallejo, Cal.; and Yuma, Ariz. NETSC does not have interstate carrier authority as it is not required for the operations conducted by NETSC.
- LTD is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Ohio under contracts with regional and local school jurisdictions. LTD also provides charter passenger services to the public. It holds interstate common carrier authority under MC-364668.
- Northeast is a passenger motor carrier primarily engaged in providing student school bus transportation services, primarily in the states of Ohio and

Pennsylvania under contracts with regional and local school jurisdictions. Northeast also provides charter passenger services to the public. It holds interstate contract carrier authority under MC-723926.

- Northwest is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services under contracts with regional and local school jurisdictions. Northwest does not have interstate carrier authority as it is not required for the operations conducted by Northwest.
- Southwest is a passenger motor carrier primarily engaged in providing student school bus transportation services in the state of Texas under contracts with regional and local school jurisdictions. Southwest also provides charter passenger services to the public. It holds interstate contract carrier authority under MC-644996.
- STSA is a passenger motor carrier primarily engaged in providing student school bus transportation services, primarily in the state of Kansas under contracts with regional and local school jurisdictions. STSA also provides charter passenger services to the public. It holds interstate contract carrier authority under MC-749360.
- Provider is a passenger motor carrier doing business as Provider Bus, and is primarily engaged in providing non-regulated school bus transportation services in the state of New Hampshire under contracts with regional and local school jurisdictions. Provider does not have interstate carrier authority as it is not required for the operations conducted by Provider.
- Rainbow provides interstate and intrastate charter and special party passenger transportation services in the state of New York. It holds interstate passenger common carrier authority under MC-490015.
- Robertson is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of New Hampshire under contracts with regional and local school jurisdictions. Robertson also provides charter passenger service to the public. It does not have active interstate carrier authority, though MC-176053 is assigned to it.
- Safeway is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of New Hampshire under contracts with regional and local school jurisdictions. It does not have active interstate carrier authority, though MC-522039 is assigned to it.
- Septran is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Illinois under contracts with regional and local school jurisdictions. It does not have active interstate carrier authority, though MC-795208 is assigned to it.
- Smith is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in the state of Maryland and surrounding areas under contracts with regional and local school jurisdictions. Smith does not have interstate carrier authority as it is not required for the operations conducted by Smith.
- Suburban Paratransit is a motor carrier providing paratransit services primarily in Westchester County and Bronx, N.Y. Suburban Paratransit does not have

interstate carrier authority as it is not required for the operations conducted by Suburban Paratransit.

- Trans Express provides interstate and intrastate passenger transportation services in the state of New York. It holds interstate passenger common carrier authority under MC-187819.
- White Plains is a passenger motor carrier doing business as Suburban Charters, and it operates primarily as a provider of non-regulated school bus transportation services in the state of New York. White Plains also operates as a motor passenger carrier providing charter service to the public. It holds interstate passenger common carrier authority under MC-160624.

Applicant asserts the following facts with regard to the Acquisition Carriers:

- Trinity is a Michigan corporation operating primarily as a provider of non-regulated school bus transportation services in southeastern Michigan, and also operates as a passenger motor carrier providing charter service to the public. Trinity holds common carrier operating authority under MC-364003.
- Trinity Cars is also a Michigan corporation, operating as an intrastate passenger motor carrier as a provider of for-hire sedan and van service in southeastern Michigan. Trinity Cars holds interstate operating authority under MC-632139.
- Trinity Student is a Michigan limited liability company and a wholly-owned subsidiary of Trinity. Trinity Student operates primarily as a provider of non-regulated school bus transportation services in the areas of Toledo and Cleveland, Ohio. Trinity Student also provides interstate charter passenger services. For purposes of its interstate passenger operations, Trinity Student holds common and contract carrier operating authority under MC-836335.

Applicant states that all of the issued and outstanding stock of Trinity and Trinity Cars is owned and held by Jerry Sheppard, Jr., Trustee of the Jerry Sheppard, Jr. Revocable Inter-Vivos Trust U/A/D Sept. 24, 2003, as amended (Jerry Sheppard Trust), and Rebetha J. Sheppard, Trustee of the Rebetha J. Sheppard Revocable Inter-Vivos Trust U/A/D Sept. 24, 2003, as amended (Rebetha Sheppard Trust) (collectively, Sellers).

Applicant asserts that there is one affiliate of the Acquisition Carriers, Trinity Coach, LLC, though it is not a part of the contemplated transaction. Applicant states that Trinity Coach, LLC, is a Michigan limited liability company that is a passenger motor carrier providing interstate services under common carrier authority under MC-537169. Jerry Sheppard, Jr., individually, holds a 100% membership interest in Trinity Coach, LLC.

Applicant further states that, other than the National Express Affiliated Carriers, the Acquisition Carriers, and Trinity Coach, there are no other affiliated carriers with regulated interstate operations, and the Sellers have no other direct or indirect ownership interest in any other interstate passenger motor carrier.

Applicant also asserts that it would acquire direct 100% control of Trinity and Trinity Cars through stock ownership, and indirect control of Trinity Student as a wholly-owned subsidiary of Trinity.

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicant submitted information, as required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), and a statement that the aggregate gross operating revenues of the National Express Affiliated Carriers and the Acquisition Carriers exceeded \$2 million for the preceding 12-month period. See 49 U.S.C. § 14303(g).¹

Applicant submits that the proposed transaction would have no significant impact on the adequacy of transportation services to the public, as the Acquisition Carriers would continue to provide the services they currently provide using the same names for the foreseeable future. Applicant states that the Acquisition Carriers “will continue to operate, but going forward, will be operating within the National Express corporate family.” (Appl. 14.)

According to Applicant, “[t]he addition of the Acquisition Carriers to the carriers held by National Express is consistent with the practices within the passenger motor carrier industry of strong, well-managed transportation organizations adapting their corporate structure to operate several different passenger carriers within the same market, but in different geographic areas.” (Id.) Applicant asserts that the Acquisition Carriers are experienced in some of the same market segments already served by some of the National Express Affiliated Carriers. Applicant expects the transaction to result in operating efficiencies and cost savings derived from economies of scale, all of which, Applicant states, would help to ensure the provision of adequate service to the public. Applicant further asserts that bringing the Acquisition Carriers within the National Express corporate family would serve to enhance the viability of the overall organization and the operations of the National Express Affiliated Carriers, which would ensure the continued availability of adequate passenger transportation service for the public. (Id.)

Applicant also claims that neither competition nor the public interest would be adversely affected by the contemplated transaction. Applicant states that the Acquisition Carriers are “relatively small carriers in the overall markets in which they compete: unregulated metropolitan school bus operations, providers of charter services, and providers of sedan and van services.” (Id.) Applicant states that school bus operators typically occupy a limited portion of the charter business because (i) the equipment offered is not as comfortable as that offered by motor coach operators; and (ii) scheduling demands imposed by the primary school bus operation impose major constraints on charter services that can be offered. It further explains that the sedan and van services business sector is comprised of a number of providers, with no provider having a dominant market share in the sector. Applicant also explains that the charter

¹ Applicants with gross operating revenues exceeding \$2 million are required to meet the requirements of 49 C.F.R. § 1182.

and sedan and van services offered by the Acquisition Carriers are geographically dispersed from those of the National Express Affiliated Carriers, and that there is limited overlap in service areas and/or in customer bases among the National Express Affiliated Carriers and the Acquisition Carriers. Thus, Applicant states that the impact of the contemplated transaction on the regulated motor carrier industry would be minimal at most and that neither competition nor the public interest would be adversely affected.

Applicant asserts that there are no fixed charges associated with the contemplated transaction. Applicant also states that it does not anticipate a measurable reduction in force or changes in compensation levels and/or benefits to employees. Applicant submits, however, that staffing redundancies could potentially result in limited downsizing of back-office or managerial level personnel.

The Board finds that the acquisition proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available on our website at “WWW.STB.GOV”.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective December 20, 2016, unless opposing comments are filed by December 19, 2016.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: November 1, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.